

The Wyoming Legislature recognizes that the solution to Wyoming's substance abuse crisis will not be found in any one "magic bullet," but rather in a comprehensive effort to employ a wide variety of measures that have proved to have positive impacts.

#### Reward and reminder for alcohol

In the mid-90s, Congress passed the so-called Synar Amendment. In short, the law requires the states to enact and enforce laws prohibiting the sale of tobacco products to minors. States are required to conduct inspections and meet a federally mandated compliance rate or face the loss of millions of dollars in substance abuse treatment grants.

The first Wyoming survey was conducted in 1996, and disclosed 46% of Wyoming retailers willing to sell to minors, far above the allowed rate of 20%. The rate fell to 33.4% in 1997, and rebounded to more than 45% the following year. The 1999 inspections disclosed an even worse violation rate, when sales were made by 55.8% of the retailers inspected.

During each of the above inspections, the Department of Health was precluded from using minors to

conduct the checks. However, in 2000, the Legislature agreed to change the law to allow for the use of minors under very heavy restrictions. Later that year, faced with the potential loss of millions of dollars in needed substance abuse treatment funds, the Department developed a plan to bring Wyoming into compliance.

The plan was based on solid science and research. It relied on rewarding clerks who complied with the law and reminding those who did not. The Department conducted an intentional campaign using underage customers. The young people entered an establishment and asked for cigarettes. If the clerk denied the sale, he or she was rewarded with a small gift such as a certificate for a meal at Taco John's. On the other hand, those clerks who agreed to the sale were given a reminder that such sales are a violation of Wyoming

law and could expose them to severe fines. It is important to note, the minors were instructed that they were not to complete the sale under any circumstances.

This "reward and reminder" campaign was carried out together with a major public relations campaign and mailings to clerks. The Department worked with retailers to train clerks.

Later that year the annual Synar inspection was conducted. The result was the most significant one-year improvement of any state in the nation. The violation rate that had been 55% in 1999, dropped to under 9% after the "reward and reminder" campaign.

Based on the overwhelming success of this program, we believe the Legislature should extend the authority to use minors for reward and reminder efforts aimed at reducing the sale of alcohol to minors.

# Fines for tobacco use by minors

Do fines for tobacco use by minors help reduce substance use? The answer is yes, based on some recent reviews. Small fines, consistently used, appear to be more effective than community service, which often involves putting together youth who use—even smoking during the community service project. The scientific finding fits the general research on behavior analysis.

One Florida study demonstrated that the process of being cited and making a

court appearance resulted in significantly less tobacco use among underage youth. (*The Monitor on Psychology, Vol. 32*, No. 59 at p. 59, 2001)

Under the current law, the court may either fine the young person or order community service. Because tobacco retailers successfully argued that minors purchasing tobacco should be exposed to the same fines as retailers who sell the tobacco, the fine structure is the same. Therefore a young smoker can be fined up to \$50 for a first offense, \$250 for a second, and as much as \$750 for a third or subsequent violation. The statute allows community service to be imposed as an alternative.

We believe the alternative is ineffective. Most communities do not have sufficient infrastructure to adequately supervise community service. During this study young people told us they were seldom cited for a violation even when it was witnessed by a law enforcement officer and, that when cited, they were given community service. Some said they were never again contacted to serve that "sentence." Some told us that while doing their community service they were-unbelievably-given smoke breaks!

All of the young people to whom we spoke said that had they been given a monetary penalty, which would have really caught their attention. Young persons who have money to purchase cigarettes also have money to pay the fines. With good research showing the imposition of small fines to be an effective deterrent, we believe judges

should be encouraged to use them, and the Legislature should repeal the community service option, or in the alternative, allow only a portion of the sentence to be worked off in community service.

#### Tobacco free schools

We surveyed 48 Wyoming school districts regarding smoking policies. All 48 prohibit smoking in school buildings. However, smoking policies on school grounds and at school events varies.

Thirty-six of the 48 districts prohibit smoking by anyone on school grounds and at school events. Of the others, some allow teachers and staff to smoke but prohibit students. Others allow visitors to smoke. A few choose to allow smoking outside but not inside buildings.

We believe the state should establish a uniform policy prohibiting all smoking by anyone in school buildings, on school property, and at school events. The dangers of teen smoking have been clearly established. Setting an example for kids is important and sending the message that smoking is not a healthy habit is something the schools should do. It is hypocritical for a district to say to students that they may not smoke while permitting teachers and other adults to do so in their presence. We recognize there may be political difficulties at the local level in imposing "no smoking" rules. Accordingly, we encourage the Legislature to adopt a uniform statewide policy.

These reforms should be accompanied with smoking cessation programs and others means of helping those addicted to nicotine. The science-based programs to achieve those goals are outlined in the Tobacco Blueprint.

## Tax strategies

The legislature should consider tax strategies designed to both reduce consumption and to pay the costs of the abuse of alcohol and the use of tobacco. Wyoming should consider whether "user" fees are appropriate. Those who use tobacco and abuse alcohol inflict the taxpayers of this state with enormous costs for healthcare, crime, corrections, and treatment among other significant financial impacts.

They are not paying for what they cause. Perhaps they should.

The report avoids establishing specific recommendations for tax increases in tobacco and alcohol. Yet it seems the legislature should consider these sources of revenue when determining how to pay for this comprehensive plan.

## **Insurance Parity**

During our study numerous providers asked that this plan recommend insurance parity, i.e. a requirement that substance abuse treatment be covered under insurance policies at the same level as other benefits. At the outset of this discussion, the authors want to disclose a conflict of interest. Rodger McDaniel, one of the

two primary writers of this report, has represented insurance interests as a lobbyist in the Wyoming legislature since 1981. Clearly, some of the conclusions contained herein are colored by that experience. Nonetheless, this is an issue that needs to be addressed in the report.

We have chosen to view the issue more broadly than to simply recommend an amendment to the insurance code. To do so would be counterproductive. The Wyoming insurance code applies only to the private insurance market and not to self-funded or ERISA programs. Approximately 60% of those who are insured are covered under the latter. Accordingly, attempting to "solve" this problem by simply mandating private insurance coverage will fall short. Such an effort would not even impact the state employees' plan that provides very little coverage for substance abuse treatment.

Second, while studies show that mandated substance abuse coverage will raise rates only 3-5%, that increase will come on top of recent increases that average over 20% and have resulted in companies leaving the Wyoming market and employers dropping their coverage altogether. According to the Wyoming Insurance Department, there has been a 25% reduction in small group insurers in the last two years. In that same period, 7 companies have left this market while 2 others have merged. The companies have told the Department they simply could not make a profit in this state. We should be cautious about reaching for seeming easy solutions that cause unintended problems.

Already there are declining numbers of employers providing coverage for either the employee or dependents. Only  $2/3^{\text{rds}}$  of employers offer health coverage to fulltime employees and the number drops to 58% for dependents. Part time employees are covered by fewer than 14% of employers. Any increase in rates will adversely impact those numbers.

It is also important to note that most of the people needing treatment are not likely insured in any event. Reports from treatment providers show that 33% of those coming for treatment earned less than \$10,000 last year. Twenty-three per cent had incomes between \$10,000 and \$19,999. More than two-thirds earned less than \$30,000. Requiring insurance coverage would not impact most of them.

The goal of policymakers should be to find a broader plan to create funding streams to expand access to treatment. We are not opposed to insurance parity but believe it would be a mistake to look to insurance parity alone. It may be a part of the mix, but done in isolation will likely cause more problems than it solves.

First, if the Legislature is to mandate insurance coverage, it should begin with the state employees plan. Before the state mandates coverage for others, it should be willing to accept the responsibility for its own employees. Under the state plan, residential care is limited to two episodes in a lifetime, one for a maximum of 20 days and the other for 10 days. Limited outpatient coverage is so low it would preclude participation

in an intensive outpatient program. Coverage is restricted to 50 visits in a calendar year and 420 in a lifetime. Nearly all private-market policies provide better coverage already. Perhaps the state plan should be the standard for "parity."

Next, the state must find a way to extend the requirement to the self-funded plans. Unless they are brought in, all of the upward pressure on premiums will fall on the private-market insured resulting in more people being uninsured.

Third, the state needs to deal with the fact that most people who need these services are uninsured. Insurance coverage will not significantly affect the ability of substance abuser to obtain treatment. Accordingly, a parity strategy must include broadening the availability of Medicaid and more liberal qualification standards for the children's health insurance program.

Any effort to expand insurance coverage should be preceded by a commitment to create an accountable system with clearly defined standards and outcome measurements.

#### .08 BAC

Under the provisions of the FY 2001 US Department of transportation Appropriations Act, the Congress is requiring the states to enact statutes establishing .08-blood alcohol content as the national standard. States that do not comply will lose certain highway construction funds.

We regret that the Congress determined to do this in the manner they frequently choose, i.e. under threat. We believe the .08 BAC proposal is worthy and would have been better considered on its own merits rather than in the context of federal mandates and threats. Nonetheless, Congress has chosen this route and the states are required to make a choice between passing the law and losing funds, when the choice should have been a simple policy matter based on considering whether lowering the blood alcohol content is a good idea. We believe it is and urge the Legislature to enact it as a part of this plan.

In the context of this plan, we think it is critical that the Legislature send a message that alcohol is the number one drug problem in Wyoming. By every measure including public health/crime statistics and the impact on children and families, abuse of alcohol causes more problems than do illegal drugs.

According to the National Highway Transportation Safety Administration (NHTSA), the risk of being involved in a highway crash increases substantially at the .08 level. Research by the Insurance Institute for Highway Safety indicates that the relative risk of being killed in a single-vehicle crash at .08 BAC is eleven times higher than for drivers at .00 BAC. California reported a 12% reduction in alcohol-related traffic fatalities the first year after an administrative license revocation law established a .08 standard.

Another study concluded a nationwide .08 standard could reduce

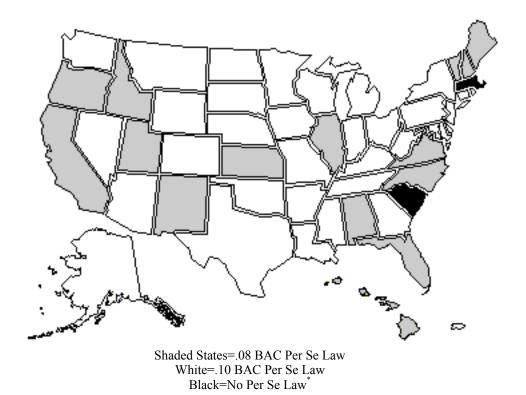
highway fatalities by 1200 deaths per year, primarily among younger drivers. (*Journal of Policy Analysis and Management 2001*, Vol. 20 Issue 1, pp 111-128)

A .08 BAC level is not reached, as some claim, with only "a couple of beers" or an after dinner glass of wine. Studies show the average 170-pound male drinker would have to consume more than four drinks in an hour on an empty stomach to reach .08. A woman weighing 137 pounds would likely require three drinks on an empty stomach. Typically, the female driver would need four drinks over two hours to get to .08 while a male would need five drinks. That is sufficient to protect

the "social drinker" from prosecution under this law.

Most states have a "per se" statute that establishes a BAC standard above which a driver is presumed guilty. The question is simply at what level should that standard be set? Who do we seek to protect by lowering the level to .08? Who do we protect by refusing to do so? More importantly, in the overall context of this plan, agreeing to enact the lower .08 standard will send a very important message that policymakers understand that it is the abuse of alcohol that poses the most serious substance abuse risk to the people of Wyoming. It makes no sense to permit people to drink more before they drive a vehicle.

Figure 61: States with .08 BAC



<sup>\*</sup> Arizona now has a .08 BAC per se law

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While we do not encourage the Legislature to enact this law because of the threat of the loss of highway construction funds, the report would be incomplete without mentioning the possibility. States failing to lower the BAC standard by FY 2004, will face the loss of 2% of certain funding. The penalty increases by 2% each year thereafter until FY 2007, when it reaches and remains at 8%. States adopting the standard by FY 2007, would have withheld funds returned. To avoid sanctions, the state must have a law in effect by October 1, 2003.

Assuming a 2% loss in the first year of the penalty, lost funds for Wyoming would total \$3,127,670, increasing incrementally as described to over \$12.5 million in the event an 8% penalty is imposed.

It is encouraging to note that significant members of the alcohol industry have agreed to support the .08 BAC. The president of the Beer Institute, the brewing industry's Washington, DC trade association, has indicated that while the Institute does not necessarily endorse the idea, neither will it oppose it. The nation's largest brewer, Anheuser-Busch did not oppose the bill when it was enacted in the Corporation's home state of Missouri.

## Prescription drug reforms

The brief time available to do this study has not provided the Division with the amount of time it would have liked to have devoted to this subject. It is clear, however, that prescription drug abuse is a

growing problem in Wyoming and around the country.

Many of us have read the numerous articles covering the controversies about drugs like oxycontin. Florida has placed limit on the number of capsules that one person may obtain. Vermont has stopped paying for the medicine under certain welfare programs. In Virginia, police provide fingerprint kits to pharmacists who keep the prints of those who obtain the drug. Many pharmacies around the country have refused to stock oxycontin because it has become such a target for burglars and robbers.

While it is a drug that currently receives the publicity, it is not the only prescription drug being abused. Ritalin has long been abused along with others such as Zoloft and Xanax. As Wyoming moves to meet the challenge of substance abuse, this issue deserves attention.

During public meetings we conducted in the course of this work, we were told anecdotally that the abuse of prescription drugs is "common"—some accidental and some intentional. UW professor Michael Loos, an expert in this area, estimates that as many as 25% of the elderly have substance abuse problems and that a significant share is related to the use of prescription drugs. He indicates some of these problems are caused by doctors who unintentionally over-prescribe. Often one doctor does not know the patient is receiving prescriptions from another.

We were told that lax rules in Wyoming facilitate prescription fraud. Prescriptions may be phoned in allowing

an abuser to obtain drugs by pretending to be an employee of a doctor calling in a prescription. The paper on which prescriptions are written is not tamper proof, permitting patient's to copy the form and obtain the same prescription from multiple outlets.

We believe this is an area that requires some action and some continued study. The action we recommend is that the Legislature direct the Pharmacy Board to adopt rules requiring the use of tamperresistant paper for the filling of prescriptions and other rules the Board may deem helpful to assure that only those entitled to receive prescription medicines do in fact receive them.

We further believe the state should create a statewide, computer database that would permit doctors, pharmacists and, in certain cases, law enforcement agents to quickly identify those who are fraudulently obtaining prescription medicines

The latter proposal should be a part of an interim study of this issue.

### 800 Number

We recommend there be established a well-publicized 800 number where Wyoming citizens may obtain the latest information about substances, prevention, and treatment. When parents, teachers, employers, or others are confronted with the problem, they need a clearly defined and well-informed person from whom they can receive reliable information and referrals. Daily the Substance Abuse Division receives telephone calls from

distraught persons trying to determine whether a child may be "on drugs" or from a loved one seeking to find treatment for someone in their family. The timely availability of good information may be the difference between getting help for a substance abuser and losing them.

As a part of the social marketing plan we propose, it is important to give citizens a place to go, a person in Wyoming to whom they can talk and from whom they can learn about Wyoming programs.

# Surcharges on drug and alcohol convictions

Consistent with the overall goals of this plan to hold people personally responsible, we believe the offenders should pay for part of the increased funding for the treatment system.

Offenders will be required to contribute financially to their own treatment. In addition, we recommend the Legislature authorize courts to impose surcharges on fines levied against certain offenders.

The precedent for this proposal is established by the Crime Victim's Compensation Act (WS 1-40-101 et. Seq.). Section 119 of that act allows the court to impose a surcharge in addition to any other fine or penalty imposed against those convicted of certain crimes. The funds are deposited in an earmarked revenue account and used for specified victims' compensation.

Those who commit crimes that are directly or indirectly related to the use of drugs and/or alcohol should be required to contribute to the system the taxpayers

otherwise fund to provide treatment. The legislature may choose to earmark these funds for drug courts or for the overall treatment needs of the state. Regardless of that policy choice, we believe these offenders should help pay the bill and that requiring them to do so is not only helpful to the taxpayer, but may also help convince abusers they need to get treatment.

# Drug and alcohol abuse by pregnant women

Among the most troubling of the Wyoming statistics are those exposing the severity of the problem of drug, alcohol, and tobacco use by pregnant mothers. It is easy to say these women should be allowed to make their own choices, but that ignores the fact that their choices impact a child who has no say in the matter. Their choices also impact the rest of us who have to pay the bills and otherwise deal with the severe problems encounters by the children who are born addicted because of mom's drug use or experience the long-term devastation of fetal alcohol syndrome.

The problem is more than academic in Wyoming and demands immediate action. The following is a section from the 2000 WY KIDS COUNT Factbook.

Wyoming continues to exceed the national average of low birth-weight babies. In 1998, 8.9% of Wyoming's babies were born at weights under five and one-half pounds. This compares to 7.6 per cent nationally. The rate of low birth-weight babies in Wyoming is alarming and has

steadily increased between the years 1991 through 1997 with only a small decline of .1 per cent in 1998. Low birth-weight infants are at greater risk to experience long-term disabilities or to die during the first year of life than are babies of normal birth weight. Prevention of low birthweight is dependent upon comprehensive prenatal care, smoking cessation, adequate nutrition, and adequate maternal weight gain. \*\*\*\*The risk can be reduced by keeping all prenatal appointments [and] avoiding tobacco and recreational drugs...."319

One Cheyenne family practitioner reports it is common that fetal alcohol syndrome or drug babies can cost the taxpayers \$1-2 million in the first months of life. Thereafter, for those children who survive, the costs continue to mount over a lifetime.

If we are willing to intervene in a meaningful way while these mothers are pregnant, we could avert millions of dollars in costs and motivate healthier families.

The connection between drug and alcohol use during pregnancy and adverse impacts on the infants born to those mothers is unquestioned. Policymakers have frequently been far too hesitant to take steps necessary to assure the safety of unborn children. The result is that children born to drug, alcohol, or tobacco abusing mothers are at high risk to have their own substance problems. These kids also cost taxpayers extraordinary amounts of money

during the first months of life and thereafter, if they survive.

In 1996, *The Journal of Substance Abuse Treatment* put first year costs for low birth-weight babies at an average of \$50,000 above "usual" births. <sup>320</sup> Wyoming doctors will tell you stories of infants that have cost the state in excess of \$1 million.

A 1999 Wyoming study raised red flags. Wyoming women arriving at health clinics for prenatal services were surveyed. Two-thirds were found to be using tobacco, alcohol, and/or illegal drugs during their pregnancy. More than one in ten were using all three!<sup>321</sup>

A January 2000, report from the national Conference of State legislatures reviews alternative approaches tried by several states. They range from criminal prosecutions of mothers to civil interventions by child welfare agencies and public health initiatives designed to educate. Some states have used drug court strategies to coerce pregnant women into treatment. 322

Some of what we propose here will be quite controversial. However, during the study, many legislators and other members of the public continually reminded us that there is a need to make parents responsible for their children. We agree and we hope policymakers will be courageous enough to require parents to assume that responsibility before the birth of the child.

We believe the legislature should continue to encourage public education efforts targeting these mothers. While attempting to open more doors to treatment, public education efforts should include efforts to "stigmatize" those who drink, smoke, or use drugs while pregnant. Wyoming should send a clear message that using substances while carrying a child is unacceptable behavior. At the same time, the state policy must recognize the addictive nature of these dangerous substances and provide mothers with treatment.

We do not encourage the prosecution of women for the act of using while pregnant. Such a punitive policy would be counterproductive in terms of the need to provide prenatal and other medical care. However, when a pregnant woman appears before a criminal court on an alcohol or drug charge, the court should be required to take action necessary to protect the unborn child. These mothers should receive sentences that require them to participate in treatment and these sentences must be adequately supervised in order to make certain they are followed. Women unable to comply with treatment options should be incarcerated for the course of their pregnancy within the maximum sentence applicable to the offense for which they have been found guilty.

We recommend that retail establishments selling alcohol and tobacco be required to post warning signs encouraging pregnant women to refrain from purchasing those products. While recognizing the difficulties such a statute would pose, we ask the Legislature to consider prohibiting the sale of alcohol or tobacco to obviously pregnant women. This kind of measure is bold and we can readily see that it will take considerable effort to draft a workable law. However,

we believe these children are worth that effort. Even though such a statute may prove difficult to enforce, it would provide a major deterrent to women who continue to comfortably drink and smoke while ignoring the impact of their conduct on their child.

Finally, we recommend Wyoming adopt a statute passed in Wisconsin in 1998. The statute recognized "unborn child abuse" permitting the detention of mothers endangering the health or life of an unborn child. The statute invokes significant protections through DFS if a mother endangers her unborn infant. Likewise, the Ohio Supreme Court recently upheld a statute defining "child abuse" to include using illicit drugs during pregnancy.

The state must find a better way to balance the interests of the mother and the unborn child. Under current law, the child has little protection. If the mother is using drugs or alcohol, so is the child and while the mother may make that choice for herself, the child has no say. The legislature and the courts must speak for them.